



FREDERICK COUNTY PLANNING COMMISSION

March 11, 2015

TITLE: Urbana Village Center – Lot 1 (former Cracked Claw/Peter Pan Inn site)

FILE NUMBER: SP-93-03, AP #13602

REQUEST: LOU Amendment (Consent Agenda)

PROJECT INFORMATION:

ADDRESS/LOCATION: Between Urbana Pike and MD 80, east of MD 355 (Worthington Boulevard) in Urbana; site of former Cracked Claw/Peter Pan Inn complex

TAX MAP/PARCEL: Tax Map 96, Parcel 59

COMP. PLAN: Village Center (VC)

ZONING: General Commercial (GC)

PLANNING REGION: Urbana

WATER/SEWER: W-1/S-1

APPLICANT/REPRESENTATIVES:

APPLICANT: Urbana Lot 1/Dixon House

OWNER: - Same -

STAFF: Ron Burns

RECOMMENDATION: Approval

Exhibits:

1. Original Letter of Understanding (LOU)
2. 1st Amended LOU
3. Proposed 2nd Amended LOU

ISSUE

The Applicant is requesting to amend the requirement in its APFO Letter of Understanding (LOU) to complete an improvement on Urbana Pike prior to the issuance of the first Certificate of Occupancy (CoO) for the site. The improvement is the sidewalk along the site frontage on the east side of Urbana Pike, previously MD 355, but now a County roadway. Two tenants who are ready to open for business find that this cannot be accomplished because this requirement in the LOU has yet to be satisfied.

BACKGROUND

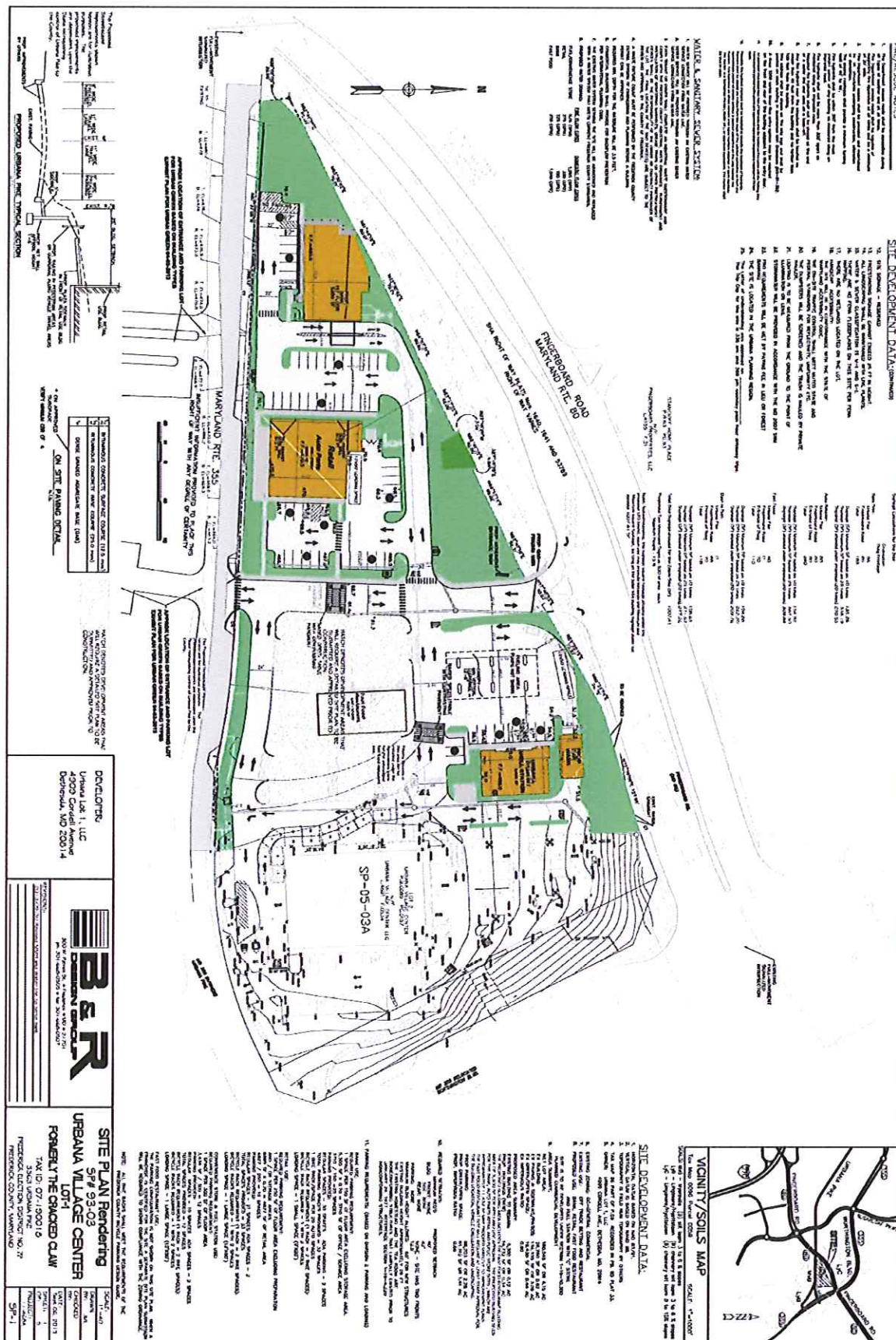
The Original LOU (Exhibit 1) was approved by the Planning Commission on December 11, 2013 as part of the approval of the Urbana Village Center – Lot 1 (SP 93-03/AP #13641). This contained the typical language requiring improvements to be guaranteed prior to building permit issuance and completed prior to CoO issuance. It was subsequently amended (Exhibit 2) on October 8, 2014 to grant CoO leniency for the timing of the nearby signal adjustments at MD 80/Urbana Pike that would not be needed for years to come, and to correct the validity date of December 11, 2016, in place of the incorrect date of October 9, 2016. Since that time, the Applicant has diligently pursued the remaining LOU requirements to provide parallel parking and sidewalks on Urbana Pike. However, there have been several very recent complications during the re-construction of Urbana Pike, many involving in-field changes to the plan to address drainage complications and the coordination of matters between two different developments, both with improvements that overlay each other. Because of these complex challenges, combined with continued bad weather, it has not yet been possible to complete the frontage sidewalk and some of the parking bays will have to be re-constructed.

ANALYSIS

In order to permit the opening of the two retail establishments, the LOU is proposed to be amended (see Exhibit 3) to defer the completion timing of the sidewalk and parking bays to a date certain of June 30, 2015. This delay creates no appreciable undue burden to the public as the sidewalk currently has no interconnection and would not really be needed until the Urban Green development sidewalk, across the street, is completed, along with two crosswalks across Urbana Pike, several months from now. Regarding the parallel parking bays, while they are essentially complete, they may need to be re-constructed. In any event, these parking bays would not be open for use until the work for Urban Green has been completed across the street, as no parking would be permitted in a construction zone. Thus there is no immediate need for the parking bays and sidewalk, and the issuance of a CoO without completion of these improvements puts the public at no health, safety or welfare risk.

RECOMMENDATION

Staff recommends approval of the Second Amendment, which will be valid until December 11, 2016, and requests Planning Commission execution of the document.





**FREDERICK COUNTY GOVERNMENT
DIVISION OF COMMUNITY DEVELOPMENT**

Eric E. Soter, Division Director

Planning & Development Review Department

Jim Gugel, Planning Director

30 North Market Street

Frederick, Maryland 21701

www.FrederickCountyMD.gov

O: 301-600-1153 F: 301-600-2054

Exhibit #1

Commissioners

Blaine R. Young
President

C. Paul Smith
Vice President

Billy Shreve
David P. Gray
Kirby Delauter

Lori L. Depies, CPA
County Manager

ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING

Urbana Lot 1

Site Plan #SP 05-03 AP #13602

In General: The following Letter of Understanding ("**Letter**") between the Frederick County Planning Commission ("**Commission**") and Urbana Lot 1, LLC (the "**Developer**"), together with its/their successors and assigns, sets forth the conditions and terms which the Commission deems to be the minimum necessary improvements dealing with school, water, sewer, and road improvements that must be in place for the property identified below to be developed, as proposed under the Urbana Lot 1 Site Plan (the "**Project**"), in compliance with the Frederick County Adequate Public Facilities Ordinance ("**APFO**").

The Developer, its successors and assigns, hereby agrees and understands that unless the required improvements (or contributions to road escrow accounts, as specified below) are provided in accordance with this Letter, APFO requirements will not be satisfied and development will not be permitted to proceed.

This Letter concerns itself with the Developer's 4.14 +/- acre parcel of land, which is zoned Village Center (VC), and located on the east side of Urbana Pike, between MD 80 and MD 355 (Worthington Blvd.), with direct access on Urbana Pike and MD 80. This APFO approval will be for the development of a mixed use shopping center which is capped at 336 a.m. and 389 p.m. weekday peak hour driveway trips, which is shown on the site plan for the above-referenced Project, which was conditionally approved by the Commission on November 13, 2013.

Schools: Schools are not impacted because the development of the property is a non-residential use.

Water and Sewer: The Property has a water and sewer classification of W-1 (Connected), S-1 (Connected). While the public sewer and water facilities are currently adequate to serve the project, the Developer recognizes that capacity is not guaranteed until purchased. APFO approval for sewer and water does not guarantee that plats will be recorded and building permits will be issued. Plat recordation and building permit

issuance are subject to compliance with the Annotated Code of Maryland, Environment Article Section 9-512, et. seq and all applicable county regulations, including but not limited to Sec. 1-16-106 of the Frederick County Subdivision Regulations.

Road Improvements: As proposed in the traffic impact analysis (TIA) performed by The Lenhart Traffic Consultants, Inc, dated May 9, 2013 and revised on July 24, 2013, the Project will generate 336 am and 389 pm weekday peak hour driveway trips and is required to mitigate all road improvements that do not satisfy level of service standards per §1-20-31. In addition, the Developer is required to provide fair share contributions to existing escrow accounts per §1-20-12(H).

In full satisfaction of APFO requirements to mitigate site-generated trips per §1-20-31, the Developer shall pay into new and existing County-held escrow accounts, the following pro rata contributions:

1. Worthington Boulevard (MD 355) Relocated - south of MD 80. Contribute the appropriate pro-rata share (4.81 % of \$3,024,791) to Existing Escrow Account No. 3232 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$145,492
2. MD 80/I-270 Northbound Ramps: Restripe/reconstruct to provide an additional westbound through lane. Contribute the appropriate pro-rata share (0.95% of \$100,000) to Existing Escrow Account No. 3921 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$950
3. I-270/MD 80 Interchange: Add northbound to eastbound directional ramp. Contribute the appropriate pro-rata share (0.95% of \$2,000,000) to Existing Escrow Account No. 3579 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$19,000
4. MD 80/Sugarloaf Parkway Roundabout: Add additional eastbound and westbound approach lanes. Contribute the appropriate pro-rata share (2.89% of \$200,000) to Existing Escrow Account No. 3922 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$5,780
5. MD 355/Urbana Pike: Signal or Roundabout. Contribute the appropriate pro-rata share (3.14% of \$500,000) to a new Escrow Account for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$15,700

In satisfaction of APFO requirements to provide fair share contributions to existing escrow accounts per §1-20-12(H), the Developer shall pay into County-held escrow accounts the following pro rata contributions:

- A. MD 80/Ijamsville Road Intersection. Contribute the appropriate pro-rata share (2.38% of \$50,000) to Existing Escrow Account No. 3383 for improvement of

- this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$1,190
- B. MD 355/MD ~~Route~~ 75: Signal. Contribute the appropriate pro-rata share (6.77% of \$175,000) to Existing Escrow Account No. 3847 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$11,848
 - C. MD 355/Fire Tower Road: Intersection improvements. Contribute the appropriate pro-rata share (4.73% of \$401,969) to Existing Escrow Account No. 3288 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$19,013.
 - D. MD 80/Carriage Hill Drive: Add additional westbound through lane, providing a replacement westbound right turn lane. Contribute the appropriate pro-rata share (0.90% of \$200,000) to Existing Escrow Account No. 3892 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$1,800.
 - E. MD 80/Pontius Court: Provide a second eastbound receiving lane and a replacement eastbound right turn lane. Contribute the appropriate pro-rata share (1.80% of \$300,000) to Existing Escrow Account No. 3923 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$5,400
 - F. MD 80/Carriage Hill Drive: Add additional eastbound through lane, providing a replacement westbound right turn lane. Contribute the appropriate pro-rata share (0.90% of \$300,000) to Existing Escrow Account No. 3924 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$2,700.
 - G. MD 80/Carriage Hill Drive: Signal. Contribute the appropriate pro-rata share (3.13% of \$175,000) to Existing Escrow Account No. 3925 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$5,478.
 - H. MD 80/Royal Crest Drive: Restripe the westbound right turn lane at the intersection to provide a through/right turn lane, extending the receiving lane as required by SHA. Contribute the appropriate pro-rata share (0.93% of \$200,000) to Existing Escrow Account No. 3926 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$1,860.
 - I. MD 80/Royal Crest Drive: Signal. Contribute the appropriate pro-rata share (1.34% of \$175,000) to Existing Escrow Account No. 3927 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$2,345.
 - J. MD 80/Campus Drive: Restripe the eastbound right turn lane to provide an eastbound through lane and right turn lane and construct the receiving lane as an auxiliary lane turning into the right turn lane into Pontius Court. Contribute the appropriate pro-rata share (2.12% of \$106,565) to Existing Escrow Account No. 3249 for improvement of this intersection by others. As

determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$2,259

- K. MD 355/Sugarloaf Parkway Roundabout: Restripe the eastbound to provide a left turn lane and a left/through/right turn lane and provide a northbound right turn lane. Contribute the appropriate pro-rata share (0.75% of \$150,000) to Existing Escrow Account No. 3930 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$1,125
- L. MD 355/Campus Drive: Second northbound through lane. Contribute the appropriate pro-rata share (1.89% of \$362,322) to Existing Escrow Account No. 3248 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$6,848
- M. MD 355/Campus Drive: Signal. Contribute the appropriate pro-rata share (1.79% of \$250,000) to Existing Escrow Account No. 3801 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$4,475
- N. MD 80/I-270 Southbound Ramps: Additional northbound right turn approach lane at the terminus of the southbound off-ramp and modify the southbound on-ramp to provide two (2) lanes, narrowing to one lane at its merge with the I-270 mainline, extending the I-270 acceleration lane. Contribute the appropriate pro-rata share (4.26% of \$200,000) to Existing Escrow Account No. 3920 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$8,520
- O. MD 355/Dr. Perry Road/Big Woods Road: Signal. Contribute the appropriate pro-rata share (8.13% of \$250,000) to Existing Escrow Account No. 3931 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$20,325

pd.
6/19/14 Therefore, prior to building permit issuance, the Developer hereby agrees to pay **\$282,108** to the escrow accounts described above for these Road Improvements. Should these payments not be made within one year of the execution of this Letter, the County reserves the right to adjust this amount, based on an engineering cost index.

The Developer also agrees to guarantee or cause to be guaranteed, prior to the issuance of any building permits, and assure completion prior to the issuance of any certificates of occupancy, the following improvements:

- I. Restripe the northbound approach at the MD 80/Urbana Pike intersection to provide a left turn lane and a left/through/right lane, and re-time the traffic signal to provide split phasing, or construct or cause to construct a comparable improvement as otherwise determined by the County and SHA, all to be completed within existing right-of-way.
- II. Reconstruct the east frontage side of Urbana Pike to provide a continuous sidewalk and parallel parking from MD 80 to the southern site access property

limit, as identified in the Project's Improvement Plan.


An escrow account shall be established for contributions by others for the first (off-site) improvement above, for the purpose of surplus capacity reimbursement to the Developer.

Period of Validity: The APFO approval is valid for three (3) years from the date of Commission approval; therefore, the APFO approval expires on October 9, 2016.


Disclaimer: This Letter pertains to APFO approval only, and shall not be construed to provide any express or implied rights to continue the development process. The Project remains subject to all applicable rules and regulations, including but not limited to those related to zoning, water and sewer, and subdivision. The Planning Commission's jurisdiction and authority is limited by State and County law, and approvals may be required from other local or state governmental agencies before the proposed development can proceed.

[Signatures on next page]

Urbana Lot 1, LLC:

By:  Date: 10/14/13
Andrew Brown, Manager

FREDERICK COUNTY PLANNING COMMISSION:

By:  Date: 12/11/13
Robert Lawrence, Chair or Dwaine Robbins, Secretary

ATTEST:

By:  1-7-14 Date:
Gary Hessong, Director, Permits & Inspections

Planner's Initials / Date  1-8-14

County Attorney's Office Initials / Date  1/8/14
(Approved as to legal form)

FIRST AMENDMENT TO
ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING
URBANA LOT 1

This First Amendment to Adequate Public Facilities Letter of Understanding, ("First Amendment"), between the Frederick County Planning Commission ("Commission") and Urbana Lot 1, LLC ("Developer"), is made this 8th day of October, 2014, by and between the Commission and Developer.

Explanatory Note: The original Adequate Public Facilities Letter of Understanding, Urbana Lot 1, dated December 11, 2013 (the "Original Letter") is being revised to modify I.) the timing of an improvement that, through no fault of the Developer, is being delayed and II.) to correct the validity period.

- I. The parties hereby agree that the following text is hereby deleted from the Original Letter: Starting with the paragraph that begins with "The Developer also agrees..." at the bottom of page 4 of the Original Letter through the end of subparagraph II on page 5 of the Original Letter. The following two paragraphs shall be inserted in place of the deleted text:

The Developer agrees to guarantee, prior to the issuance of any building permits, and have open to traffic by the end of the period of validity, the restriping of the northbound approach at the MD 80/Urbana Pike intersection to provide a left turn lane and a left/through/right lane, and re-time the traffic signal to provide split phasing, or construct or cause to construct a comparable improvement as otherwise determined by the County and SHA, all to be completed within existing right-of-way.

The Developer also agrees to guarantee, prior to the issuance of any building permits, and have open to traffic, prior to the issuance of any certificates of occupancy, the reconstruction of the east frontage side of Urbana Pike to provide a continuous sidewalk and parallel parking from MD 80 to the southern site access property limit, as identified in the Project's Improvement Plan.

- II. The parties hereby agree that the following text is hereby deleted from the Original Letter: Period of Validity section on page 5. The following paragraph shall be inserted in place of the deleted text:

The APFO approval is valid for three (3) years from the date of Commission approval; therefore, the APFO approval expires on December 11, 2016.

Except as specifically modified by this First Amendment, the Original Letter shall remain unchanged and in full force and effect.

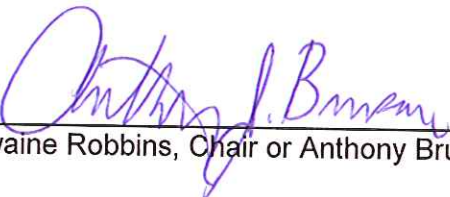
|
[Signatures next page]

Urbana Lot 1, LLC

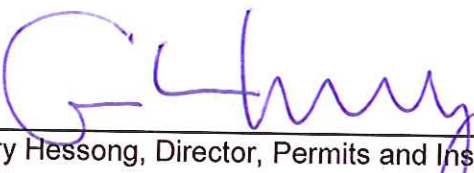
By: 
Andrew Brown, Manager

Date: Sept 29, 2014

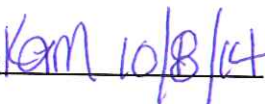
FREDERICK COUNTY PLANNING COMMISSION

BY:  Date: 10/08/2014
Dwaine Robbins, Chair or Anthony Bruscia, Secretary

ATTEST:

BY:  Date: 11/19/14
Gary Hessong, Director, Permits and Inspections

Planner's Initials / Date  10/19/14

County Attorney's Office Initials / Date  10/8/14
(Approved as to legal form)

SECOND AMENDMENT TO
ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING
URBANA LOT 1

This Second Amendment to Adequate Public Facilities Letter of Understanding, ("Second Amendment"), between the Frederick County Planning Commission ("Commission") and Urbana Lot 1, LLC ("Developer"), is made this 11th day of March, 2015, by and between the Commission and Developer.

Explanatory Note: The original Adequate Public Facilities Letter of Understanding, Urbana Lot 1, dated December 11, 2013 (the "Original Letter"), as amended by the First Amendment to Adequate Public Facilities Letter of Understanding dated October 8, 2014 (the "First Amendment"), is being revised to modify I.) the timing of an improvement that, through no fault of the Developer, is being delayed and II.) to correct the validity period. The following is a full restatement of, and replaces, the First Amendment.

- I. The parties hereby agree that the following text is hereby deleted from the Original Letter: Starting with the paragraph that begins with "The Developer also agrees..." at the bottom of page 4 of the Original Letter through the end of subparagraph II on page 5 of the Original Letter. The following two paragraphs shall be inserted in place of the deleted text:

The Developer agrees to guarantee, prior to the issuance of any building permits, and have open to traffic, by the end of the validity period of this Letter, the restriping of the northbound approach at the MD 80/Urbana Pike intersection to provide a left turn lane and a left/through/right lane, and re-time the traffic signal to provide split phasing, or construct or cause to construct a comparable improvement as otherwise determined by the County and SHA, all to be completed within existing right-of-way.

The Developer also agrees to guarantee, prior to the issuance of any building permits, and have open to traffic, prior to June 30, 2015, the reconstruction of the east frontage side of Urbana Pike to provide a continuous sidewalk and parallel parking from MD 80 to the southern site access property limit, as identified in the Project's Improvement Plan.

- II. The parties hereby agree that the following text is hereby deleted from the Original Letter: Period of Validity section on page 5. The following paragraph shall be inserted in place of the deleted text:

The APFO approval is valid for three (3) years from the date of Commission approval; therefore, the APFO approval expires on December 11, 2016.

Except as specifically modified by this Second Amendment, the Original Letter shall remain unchanged and in full force and effect.

[Signatures next page]

Urbana Lot 1, LLC

By: 
Andrew Brown, Manager

Date: March 2, 2015

FREDERICK COUNTY PLANNING COMMISSION

BY: _____ Date: _____
Dwayne Robbins, Chair or Anthony Bruscia, Secretary

ATTEST:

BY: _____ Date: _____
Gary Hessong, Director, Permits and Inspections

Planner's Initials / Date _____

County Attorney's Office Initials / Date _____
(Approved as to legal form)